

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JAMES LAPOINT,

Petitioner,

v.

Case No.: 2:19-cv-858-FtM-38MRM

SECRETARY, DOC and STATE OF
FLORIDA,

Respondents.

_____ /

OPINION AND ORDER¹

Before the Court is Petitioner James LaPoint's ("Petitioner" or "LaPoint") Motion for Delayed Filing ([Doc. 1](#)) and Application to Proceed in District Court Without Prepaying Fees or Costs ([Doc. 2](#)). For the following reasons, the Court grants in part and denies in part LaPoint's Motion for Delayed Filing and allows him to proceed *in forma pauperis*.

LaPoint moves the Court to accept his December 9, 2019 [28 U.S.C. § 2254](#) Petition as timely filed because the Clerk's Office failed to file his original September 11, 2019 Petition.² ([Docs. 1](#); [1-1](#); [1-3](#); [1-4](#)). The Court will grant the motion to the limited extent the Clerk will accept the Petition and Memorandum of Law ([Docs. 1-1](#); [1-2](#)) for filing as separate documents.³ To the extent Petitioner wants the Court to accept the Petition as

¹ Disclaimer: Documents hyperlinked to CM/ECF are subject to PACER fees. By using hyperlinks, the Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide, nor does it have any agreements with them. The Court is also not responsible for a hyperlink's availability and functionality, and a failed hyperlink does not affect this Order.

² Petitioner provides a copy of his Petition bearing a Marion Correctional Institution date stamp of September 11, 2019. ([Doc. 1-1](#)). The Clerk's Office has no record of receiving this Petition. ([Doc. 1-4](#)).

³ Notably, the Court is not deciding whether the Petition is timely filed at this stage in the proceedings. Therefore, this Order should not be construed as extending the statute of limitations for § 2254 actions under [28 U.S.C. § 2244\(d\)\(1\)](#).

timely filed, such a motion is premature. The Court will determine whether the Petition is timely after Respondent files its Response.

Last, because Petitioner does not have “\$25.00 or more to his credit[,]” he may proceed *in forma pauperis*. M.D. Loc. R. 4.14(b).

Accordingly, it is now

ORDERED:

1. Petitioner James LaPoint’s Motion for Delayed Filing ([Doc. 1](#)) is **GRANTED IN PART** and **DENIED IN PART**.

- a. The motion is **GRANTED** to the limited extent that the Clerk will accept the Petition ([Doc. 1-1](#)) and Memorandum of Law ([Doc. 1-2](#)) as separate documents to be filed on the docket.

- b. The motion is **DENIED without prejudice** to the extent Petitioner asks this Court to accept the Petition as timely filed.

2. Petitioner’s Application to Proceed in the District Court Without Prepaying Fees or Costs ([Doc. 2](#)) is **GRANTED**.

3. The Clerk will accept the Petition ([Doc. 1-1](#)) and Memorandum of Law ([Doc. 1-2](#)) as separate documents and file them as Documents 8 and 9, in that order, on the docket. The Clerk will file this Order as Document 7.

DONE and **ORDERED** in Fort Myers, Florida this 29th day of January, 2020.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record